



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/928,851	08/13/2001	William James Harrison	ACS-55967 (27001)	8276

24201 7590 10/09/2003

FULWIDER PATTON LEE & UTECHT, LLP
HOWARD HUGHES CENTER
6060 CENTER DRIVE
TENTH FLOOR
LOS ANGELES, CA 90045

EXAMINER

THALER, MICHAEL H

ART UNIT PAPER NUMBER

3731

DATE MAILED: 10/09/2003

7

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Applicati n N .

09/928,851

Examiner

Michael Thaler

Applicant(s)

HARRISON ET AL.

Art Unit

3731

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 August 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-36 is/are pending in the application.
- 4a) Of the above claim(s) 5,7,15,18,27,33 and 36 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-4,6,8-14,16,17,19-26,28-32,34 and 35 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 3,4.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

Art Unit: 3731

Claims 5, 7, 15, 18, 27, 33 and 36 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim. Election was made without traverse in Paper No. 6. Contrary to applicant's remarks, claims 18, 27 do not read on the elected species of figure 7 since the triangular cells of figure 7 in one ring is not staggered from the triangular cells in an adjacent ring.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Art Unit: 3731

Claims 1-4, 6, 9, 10, 12-14, 16, 19, 20, 22-26, 28-31, 34 and 35 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Hansen et al. (5,928,280). Hansen et al., as shown in the attached appendix A, show a plurality of rings wherein each ring includes a plurality of triangular cells, each cell including two V struts of different amplitudes (one V strut colored solid red while the other colored solid yellow) and a connecting element (colored striped red). Although the V strut colored solid red is not a perfect V, the V struts of applicant's invention are not perfect V's either, since they include a curvature along the legs of the V as well as a rounded apex which are absent from a perfect V. Thus, the term "V strut" used in this application is considered to mean a shape similar to a V. The strut colored solid red is clearly very similar to a V. The cells 2 of Hansen et al. are "triangular" as claimed even though they are not perfect triangles. The cells of applicant's invention are not perfect triangles either, since they include more than three sides and curvature along the sides which are absent from a perfect triangle. Thus, the term "triangular" used in this application is considered to mean a shape similar to a triangle. The cells 2 of Hansen et al. are very clearly shaped similar to triangles. Alternatively, it would have been obvious

Art Unit: 3731

that the Hansen et al. struts are V struts and the cells are triangular for these reasons. As to claims 2, 25, 29, 34 and 35, the Hansen et al. ends of the V struts coincide at enlarged areas since the end portions of the struts colored red have a enlarged width which inherently reduces stress concentrations. As to claims 3, 4, 14 and 19, the rounded point (col. 7, lines 10-11) of the Hansen et al. strut is curved and has a radius.

Claims 8 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hansen et al. (5,928,280) in view of Cox (6,171,334). Hansen et al. fail to disclose connecting elements out of phase. However, Cox teaches that connecting elements 52 may be out of phase which results in the apparent advantage of providing increased flexibility of the stent. It would have been obvious to make the Hansen et al. connecting elements out of phase so that it too would have this advantage. With this modification, the connecting elements would be separated by at least two cells as defined in claim 17, noting the spacing of connecting elements 52 of Cox.

Claims 11, 21 and 32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hansen et al. (5,928,280). Hansen et al. fail to disclose the connecting element coinciding with at least one of the small angle vertices. However, it was well known in

Art Unit: 3731

this art to so locate the connecting elements of a stent in order to improve its flexibility. It would have been obvious to so locate the Hansen et al. connecting elements so that it too would have this advantage.


The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Thaler whose telephone number is (703) 308-2981. The examiner can normally be reached Monday to Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael J. Milano can be reached on (703)308-2496. The fax phone numbers for the organization where this application or proceeding is assigned are (703)305-3590 for regular communications and (703)305-3590 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)308-0858.

mht
October 2, 2003


MICHAEL THALER
PRIMARY EXAMINER
ART UNIT 3731

